

**IN THE SUPREME COURT OF NOVA SCOTIA  
(FAMILY DIVISION)**

**Citation:** Nova Scotia (Health) v. C.R., 2011 NSSC 299

**Date:** 2011 03 09

**Docket:** SFHAPA 034880

**Registry:** Halifax

**Between:**

Minister of Health

Applicant

v.

C.R.

Respondent

**Editorial Notice**

Identifying information has been removed from this electronic version of the judgment.

**Judge:** The Honourable Justice Leslie J. Dellapinna

**Heard:** March 9, 2011, in Halifax, Nova Scotia

**Written Decision:** July 19, 2011

**Counsel:** J. Underhill counsel for the Minister of Health  
C. Campbell counsel for C.R.

**By the Court:**

[1] This is a hearing resulting from a Motion filed on behalf of the Minister to renew an order under the *Adult Protection Act*, R.S.N.S. 1989, chapter 2, that was issued on June 28<sup>th</sup>, 2010 which I granted. That order was renewed on December 3<sup>rd</sup> on the understanding that it was meant to maintain the *status quo* until the Minister's Motion could receive a more thorough hearing. The Motion is supported by an affidavit from Mr. Greg McConnell, an Adult Protection Worker with the Department of Health. He is assigned to C.R. and has been responsible for her file since December 2008.

[2] By way of background the Minister first applied pursuant to the *Adult Protection Act* seeking an order declaring C.R. to be an adult in need of protection and not mentally competent to decide whether or not to accept the assistance of the Minister on October 5, 2004. The application was contested by C.R.. Associate Chief Justice Ferguson, as he then was, granted an order under the *Act* on October 26<sup>th</sup>, 2004 but set the matter over for a hearing which took place on March 29<sup>th</sup> and 30<sup>th</sup>, 2005. Subsequent to that hearing Associate Chief Justice Ferguson concluded C.R. was an adult in need of protection and renewed his earlier Order of October 26, 2004. That Order was subsequently renewed on

September 19, 2005 and again on May 3, 2006 after another contested hearing before the Honourable Justice Beryl MacDonald.

[3] In July 2006 C.R. moved to a small options home in Dartmouth and later moved to another home in Halifax. These placements were arranged through the Services for Persons with Disabilities' Program of the Department of Community Services. The order of May 3, 2006 was renewed again on October 3, 2006 and March 15, 2007, the latter again following a contested hearing.

[4] Subsequently the order was renewed by consent on September 11, 2007, February 21, 2008 and March 9, 2008. After the Minister again applied to renew the order on October 19, 2008 the May 9, 2008 order was renewed on November 3, 2008 to allow for another contested hearing which took place before me on March 13, 2009. After that hearing I again renewed the order.

[5] In May 2009 C.R.'s small option home was again relocated - this time back to Dartmouth. In July 2009 C.R. was admitted to the Nova Scotia Hospital where she remains today as a voluntary patient.

[6] The last order was renewed by consent on September 10, 2009, March 1, 2010, June 28, 2010 and on December 3, 2010.

[7] These proceedings involve the Minister again seeking a renewal of the last order under the *Adult Protection Act*. The Minister's evidence can be summarized briefly as follows:

[8] Since C.R.'s admission to the Nova Scotia Hospital in July 2009 her condition or mental health has improved to a degree. Her condition appears to at least have stabilized. Consideration was given to finding C.R. a community based placement pursuant to a Community Treatment Order however that was later determined not to be an option because in or about August of 2010 Dr. Emmanuel Aquino concluded that C.R. had the capacity to consent to treatment. To be more specific, on August 5, 2010 Dr. Aquino, who is C.R.'s treating psychiatrist at the Nova Scotia Hospital, signed a Revocation of Capacity Form (which is a standardized form provided by the regulations to the *Hospitals Act*, R.S. N.S. 1989, chapter 208) pursuant to section 57 of the *Hospitals Act* in which he stated:

"I declare that in my opinion [C.R.] is capable of consenting to the following treatment or treatments: pharmacotherapy".

[9] Pharmacotherapy is defined as the treatment of disease through the administration of drugs.

[10] At a case conference on September 29, 2010 Dr. Aquino also opined that C.R. lacked the capacity to make personal decisions and that “her level of wellness is as good as it’s going to be”. It should be noted that C.R. has a history of schizophrenia, she has been prescribed and takes various medications including antipsychotic medications as well as an anti-depressant and medication to control her diabetes.

[11] During cross-examination Dr. Aquino said, among other things, that C.R. would need help with her personal care if she left the hospital as well as other support. He was not confident that the support of family and friends would be enough but did say she could live on her own with the help of the SCOT team. Somewhat troubling for the Court is that it was his evidence that C.R. does not believe that she needs assistance.

[12] The Minister’s evidence also included a report from Ms. Sherran Henderson, an occupational therapist employed by the Capital District Health

Authority. She has worked with C.R. at the Nova Scotia Hospital. In her report she said among other things at page 4:

“In discussing C.R.’s preferred living arrangements when she leaves the hospital she is quite adamant that she wants to live on her own. When asking (sic) if she would be willing to have some supports in the community she becomes upset and the discussion becomes centered around past events and people she identifies that have made things difficult for her”.

[13] And at page 5:

“Reports from the home [referring to the small option home before she was admitted to the Nova Scotia Hospital] and the Department of Community Services also indicate that C.R. had difficulty maintaining her room and would be asked frequently to sort through her belongings because her room was becoming a potential fire hazard with the clutter. Some of her belongings had to be removed and C.R. remains resentful that this action was taken and is unable to understand the concern that was expressed by staff.

While in hospital C.R. has been set up with a routine that assists her in maintaining regular hygiene. She will be starting a meal preparation program on Sept. 30, 2010; this was not available sooner because of her involvement with \*. C.R. seems to have benefited from the structure that has been available in the hospital. The structure provides C.R. with purposeful activity as well as an opportunity to engage in free time activity. She is able to maintain her room, with occasional reminders, but one does notice stacks of boxes in the corner and through her closet.”

[14] Later on the same page:

“C.R.’s hygiene is well maintained in the hospital with occasional reminders. Staff have tried to assist C.R. in becoming more independent in her medication regime. However, both instruction and guidance with a dosette and blister pack medication was provided and C.R. continued to experience difficulty and hence this program was discontinued. C.R. has a long history of medication non-compliance. However, this may not be just the result of that lack of acceptance regarding the need for medication but also her inability to follow a medication schedule.”

[15] An assessment of C.R.'s ability to perform daily living activities resulted in her scoring in the low functioning range indicating that she would benefit from assistance when living in the community. She also scored in the low functioning area when it came to the sub-test on managing money including poor knowledge about services available to her and the importance of paying bills. She also scored low on the sub-tests for managing common household tasks and understanding of medications.

[16] Among Ms. Henderson's recommendations she said that C.R. requires supported housing when living in the community such as a small options home, assistance in developing a structured daily routine, assistance with budgeting her money and a close monitoring of her medications.

[17] Ms. Henderson's report is now over five months old but I think it is safe to say it still reflects her opinion today. She testified that C.R. does well in a structured routine but makes poor choices as soon as that structure is removed. She gave as an example C.R.'s difficulty in budgeting her money and the payment of her bills. She also opined that she did not think C.R. could live independently without support and suggested a small options home would be suitable for her

because it would offer her structure and support and a degree of independence.

She also felt C.R. would be at risk if C.R.'s plan, which did not involve an Adult Protection Act order, was accepted by the Court.

[18] It is the Minister's position that C.R. is still in need of protection but, assuming the Adult Protection order is renewed, the Minister would be willing to work with C.R., the Department of Community Services and the Nova Scotia Hospital to put together a plan for a living arrangement for C.R. that would permit the maximum degree of freedom for C.R. that is consistent with her own protection. Until then the Minister would support C.R. remaining at the Nova Scotia Hospital until a safe discharge plan can be arranged.

[19] On behalf of C.R. it is not suggested that she can live entirely independent of outside assistance. Her case theory recognizes she has limitations and will have to access support from the community. However on her behalf it is argued that the Minister has not met its onus required for a renewal of the order under the *Adult Protection Act*.

[20] The most relevant provisions of the *Adult Protection Act* are as follows:



3 (a) "adult" means a person who is or is apparently sixteen years of age or older;  
(b) "adult in need of protection" means an adult who, in the premises where he resides,

(i) is a victim of physical abuse, sexual abuse, mental cruelty or a combination thereof, is incapable of protecting himself therefrom by reason of physical disability or mental infirmity, and refuses, delays or is unable to make provision for his protection therefrom,

or

(ii) is not receiving adequate care and attention, is incapable of caring adequately for himself by reason of physical disability or mental infirmity, and refuses, delays or is unable to make provision for his adequate care and attention;

...

9 (1) Where on the basis of an assessment made pursuant to this Act the Minister is satisfied that there are reasonable and probable grounds to believe a person is an adult in need of protection, he may apply to a court for an order declaring the person to be an adult in need of protection and, where applicable, a protective intervention order.

...

(3) Where the court finds, upon the hearing of the application, that a person is an adult in need of protection and either

(a) is not mentally competent to decide whether or not to accept the assistance of the Minister; or

(b) is refusing the assistance by reason of duress,

the court shall so declare and may, where it appears to the court to be in the best interest of that person,

(c) make an order authorizing the Minister to provide the adult with services, including placement in a facility approved by the Minister, which will enhance the ability of the adult to care and fend adequately for himself or which will protect the adult from abuse or neglect;

...

12 In any proceeding taken pursuant to this Act the court or judge shall apply the principle that the welfare of the adult in need of protection is the paramount consideration.

[21] Mr. Underhill referred the Court to a number of cases. I have now reviewed those cases. I found them to be helpful. In particular the Supreme Court of

Canada decision in the Nova Scotia *Minister of Health vs. JJ* decision cited as [2005] 1 S.C.R. 177 because it touched upon the extent this Court can amend the plans or proposals put forward by the Minister for the adult who is in need of protection.

[22] I want to preface the remainder of my decision by referring to a previous decision of this Court rendered by the Honourable Justice Beryl MacDonald in March 2007 following a similar review application involving the same parties that are now before the Court. Justice MacDonald's decision is indexed at 2007 NSSC 78 and I refer to paragraph 5 of that decision which reads as follows:

“A review is not an appeal procedure. The Minister is not required on a review to once again prove previous findings. Those previous findings are the starting point. The inquiry is whether or not a change has occurred. The Minister must satisfy this court that on the review date C.R. continues to be an adult in need of protection and that she is “not mentally competent to decide whether or not to accept the assistance of the Minister”. Previous findings that C.R.'s mental illnesses are chronic may be considered in this proceeding. These mental illnesses are not “curable”. Some individuals may learn to manage these illnesses and are capable of living independently. The question is can C.R. do so?”

[23] C.R. has not produced any evidence to lead the Court to believe that she no longer suffers from her previously diagnosed mental illness. The best that can be said is that her condition has stabilized and is better than it may have been in July

2009 when she was hospitalized. But it would not be accurate to say it is better than it was when I last conducted a review of C.R.'s case in March 2009.

[24] The Respondent's position is: although C.R. may be an adult in need of protection (or would be in the absence of an order under the *Act*) the Minister has not established that C.R. is not mentally competent to decide whether or not to accept the assistance of the Minister. And further, that given the Minister's plan for C.R. may include placing her in an adult residential facility, it would not be in her best interest to make an order authorizing the Minister to provide her with services and, more importantly, would not be in her best interest to authorize the Applicant to place her in a facility approved by the Minister.

[25] Mr. Campbell on C.R.'s behalf draws a correlation between Dr. Aquino's declaration that C.R. is capable of consenting to her pharmacotherapy and C.R.'s competency to decide for herself whether to accept the assistance of the Minister. If she can do one she must be able or competent to do the other.

[26] I disagree. Firstly, Dr. Aquino's determination of whether C.R. is able to consent to medical treatment is a medical decision to be made by him using his

expertise as a physician. The decision to be made for the purpose of section 9 3(a) of the *Adult Protection Act* is a legal determination. Further, section 9 (3) (a) contemplates considerations much broader than the ability to understand the advantages, disadvantages and consequences of taking or not taking certain medication that may be prescribed. Section 9 (3)(a) requires an analysis of whether C.R. appreciates the advantages of accepting the assistance of the Minister in all its forms - not just the administration of her medications - and the consequences of not accepting them. I do not believe that she does.

[27] C.R. wants her independence. That's understandable. She says she wants to be free of the Minister so that she can live in Halifax in her own apartment and be independent. That is not practical. All the evidence suggests and convinces me that she can't live independent of various forms of assistance. She needs someone to manage or help her manage her finances. She can't do it on her own. She needs someone to help her select, purchase and prepare her meals and meet her dietary requirements. She needs someone to help her take her medications properly. She needs someone to help her maintain her residence - wherever it may be. She doesn't accept any of these facts. She doesn't believe that she needs assistance.

[28] Her discharge plan (Exhibit 4) assumes she is capable of doing most of these tasks on her own, but she isn't. She believes she can. She honestly intends to follow through with her plan and she believes she is capable of doing so. She is not aware of her own limitations. She is also not willing to accept any formal mental health services if the Court does not renew the Adult Protection Order.

[29] I find that in addition to still being an adult in need of protection because she is incapable of caring adequately for herself by reason of mental infirmity and is unable (without an Adult Protection order) to make provisions for her adequate care and attention she is also not mentally competent to decide whether or not to accept the assistance of the Minister.

[30] It was also emphasized on behalf of C.R.'s that section 12 of the *Act* requires that in any proceeding taken pursuant to the *Act* the Court shall apply that the principle that the welfare of the adult in need of protection is the paramount consideration and section 9 (3) (c) makes it clear that the Court should authorize the Minister to provide that person with services including placement in a facility approved by the Minister only if it appears to the Court that it is in the best

interest of the adult in need of protection to do so. With those provisions in mind it was submitted that the evidence shows that in all probability if the order is renewed C.R. will be placed in an adult residential centre because she has been classified as an “adult residential client”. If she is so placed she will be moved away from the Nova Scotia Hospital and the Abbey Lane Hospital. She will be moved further away from her mother and she will be taken away from \* Industries where C.R. does volunteer work. It was submitted that that would not be in C.R.’s best interest.

[31] I do not accept that argument. Firstly, placing C.R. in an adult residential centre is not the Minister’s plan. The plan is to keep her at the Nova Scotia Hospital until a safe discharge plan can be arranged. It is hoped that a plan can be put together that would result in C.R. being adequately protected but still permitting her most of the freedoms that she is seeking. But, if she should have to be placed in a adult residential centre, although not optimal, I cannot conclude, given C.R.’s limitations, that it would not be in her best interest if no other reasonable options are available to protect her from harm.

[32] Therefore, I authorize the Minister to provide C.R. with services including placement in a facility approved by the Minister. Finally, although I am not ordering it even though it appears I may have the authority to do so, I urge the Minister, if possible, to avoid placing C.R. in an adult residential centre. A small options home in Halifax, if possible, would be more desirable to C.R. (as compared to an adult residential centre) and should provide her with the structure, support and protection she needs and at least a degree of the independence that she wants.

[33] Therefore the order under the **Adult Protection Act** will be renewed.

J.